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No. 80-1823

IN THE
Supreme Court of the United States
OCTOBER TERM, 1980

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO,

and

METAL TRADES DEPARTMENT, AFL-CIO, *et al.*,
Petitioners,

v.

DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY FOR PETITIONERS

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Respondents suggest (Res. Br. 5, 6) that the language of 5 U.S.C. § 5344(b) demonstrates that Congress did not intend that federal blue-collar employees acquire a vested right to a prevailing rate wage increase upon expiration of the 45-day period prescribed by section 5344(a). Respondents, instead, contend that no vesting occurs until some later date when an agency issues an order authorizing payment of the wage increase. Respondents' argument is without merit.

1. Respondents' contention ignores the plain language of 5 U.S.C. § 5344(a) that "[e]ach increase . . . is

effective not later than the . . . 45th day . . . following the date the wage survey is ordered . . . ." This language evidences the intent of Congress that it is the expiration of the 45-day period, not some later date, which is determinative for vesting purposes.

2. Respondents correctly note that section 5344(b) operates so as to deny the retroactive payment of statutory wage increases to individuals whose employment with the federal government has terminated, by reason other than death or retirement, between the expiration of the 45-day period and an agency order placing such wage increases into effect. However, contrary to respondents' suggestion, the language within section 5344(b) does not detract from petitioners' position that the employees acquired a vested right to survey-determined wage increases upon expiration of the 45-day period.

The language of section 5344(b) is tied to the expiration of the 45-day period prescribed by section 5344(a), requiring agencies to make payments to employees retroactive to that date. While section 5344(b) evidences a recognition by Congress that the wheels of government turn slowly when the matter of employee pay is concerned, the language of section 5344(b) does not evidence an intent, as argued by respondents, that employees receive a vested right to an increase only upon the issuance of an agency order placing the increase into effect. If Congress had such an intention, it would have eliminated altogether the "retroactivity" language within section 5344. The exclusion from the "retroactivity" provision of individuals who have resigned from the government between the effective date of a survey-determined wage increase and the date on which an agency orders payment of an increase, petitioners suggest, was intended only to save agencies the time and trouble of identifying and locating employees who have terminated their employment during this period. Congress, petitioners sub-

mit, recognized that, in all likelihood, the "entitlement" of these employees to a wage increase would be insubstantial when weighed against the cost to the agencies of identifying and locating these individuals. It was for this reason that section 5344(b) was written, rather than to delay beyond the expiration of the 45-day period an employee's entitlement to a statutory wage increase.

For the foregoing reasons, as well as those stated in the Petition for Certiorari, petitioners pray that the Petition for Certiorari be granted.

Respectfully submitted,

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